

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8501 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

G E B

Versus

MOHANLAL A PATEL

Appearance:

MS MAYA S DESAI for MR MD PANDYA for Petitioner
MR BT BUCH for Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/07/2001

ORAL JUDGEMENT

1. By way of this petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the award of the Industrial Tribunal, Ahmedabad in Reference (IT) No.348/81 whereby the respondent was ordered to be appointed as an Assistant Operator in the

pay scale of 315-715 with retrospective effect and further to pay him all other benefits accordingly.

2. Despite several opportunities being granted, no one is present on behalf of the respondent. The learned counsel for the petitioner submitted that the Industrial Tribunal travelled beyond the scope of the reference in making the impugned award, in so far the terms of reference were restricted to the issue whether the respondent should be granted the benefit of the pay scale of 315-15-715 under the GSO-43 dated 2.11.1961 of the petitioner Board. There was no dispute about the fact that the respondent had joined the service of the petitioner in 1976 as a Trainee Helper and thereafter he was promoted as a Switch Board Operator on 15.12.1978. The case of the respondent before the Tribunal was that as he was qualified for the post of Assistant Operator, he ought to have been appointed as an Assistant Operator and put into the pay scale accordingly. The respondent had admitted before the Tribunal that he was only promoted as a Switch Board Operator and not appointed on the post of Assistant Operator. Even in this background of fact, after consideration of the contentions of the parties, the Tribunal appears to have come to the conclusion that the respondent ought to have been appointed on the post of Assistant Operator as he was qualified for the same and that the petitioner had failed to give any reasons for not doing so. Therefore, on the assumption that the respondent was subjected to injustice, he was awarded the pay scale of 315-715 with all the concomitant benefits with effect from the date on which he was appointed as a Switch Board Operator.

3. As seen earlier, the claim of the respondent-workman and the terms of reference were restricted to the benefits of the pay scale of 315-15-715 which was prescribed under GSO -43 dated 2.11.1961 of the petitioner Board. It is one thing to examine whether the pay scale prescribed by the said GSO-43 were applicable to the respondent-workman and it is quite another to examine whether he ought to have been appointed on that post. The latter question was not a part of the terms of reference and obviously the Tribunal travelled beyond the terms of reference in examining whether the respondent ought to have been appointed on the higher post. Even the justification pressed into service that he was qualified for that post according to the aforesaid GSO is not good as mere eligibility or qualification for a particular post cannot entitle a person to be appointed on such post. Therefore, it was not proper for the Tribunal to decide the post on which the respondent ought

to have been appointed and grant any relief on that basis.

4. It is now well-settled that the Industrial Tribunal or the Labour Court to which a reference is made derives its jurisdiction from the order of reference and it cannot travel beyond the scope of reference. In the facts of the present case, the Tribunal has obviously adjudicated the issue regarding the post to which the respondent ought to have been appointed. Otherwise, the GSO-43 confers no right upon any employees for appointment on the post of Assistant Operator. Thus, the respondent workman neither had an existing right to be appointed on a particular post nor was it within the jurisdiction of the Court to hold that the respondent ought to have been appointed on such post. In this view of the matter, the impugned award cannot be sustained and has to be set aside. Accordingly, the petition is allowed, the impugned award of the Tribunal is set aside and Rule is made absolute with no order as to costs.

Sd/-

10.7.2001 (D.H.Waghela, J.)
(KMG Thilake)